

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

Case No. A-5799

PETITION OF ABIGAIL J. MOSS
(Hearing held September 11, 2002)

OPINION OF THE BOARD
(Effective date of Opinion, October 10, 2002)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for variances from Section 59-C-1.323(b)(2). The petitioner seeks variances of 3.50 feet for the existing single-family dwelling as it is within 16.50 feet of the rear lot line and of 3.50 feet for the construction of a two-story addition as it is within 16.50 feet of the rear lot line. The required rear lot line setback is twenty (20) feet.

Margaret E. Clark, architect, appeared with the petitioner at the public hearing.

The subject property is Part of Lots 35 and 36, Section 1, Chevy Chase Gardens Subdivision, located at 4605 Hunt Avenue, Chevy Chase, Maryland, in the R-60 Zone (Tax Account No. 00473405).

Decision of the Board: Requested variances **granted**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner seeks variances for the existing residence and a two-story addition. The addition would be located in the western side yard.
2. Ms. Clark testified that the petitioner's house was built in 1929 and that the house is currently sited in the rear yard setback. Ms. Clark testified that the addition will be aligned with the residence and would protrude no further than the existing house.
3. Ms. Clark testified that the petitioner's property is a small and shallow lot. The petitioner's lot is 70-feet deep and it is significantly smaller than the adjoining lots, which are 100-feet deep. The petitioner's lot is 4,950 square feet. See, Exhibit No. 8.
4. Ms. Clark testified that the architectural design of the addition will be in harmony with the existing residence. The petitioner testified that her property backs up to a school and that she has spoken with her neighbors, and

received their support for the requested variances. Letters of support were entered in the record as Exhibit Nos. 13(a) and (b).

FINDINGS OF THE BOARD

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variances can be granted. The requested variances comply with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

- (a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The petitioner's property is an exceptionally small and shallow lot. The lot is 4,950 square feet and it is significantly smaller than neighboring properties in the immediate neighborhood. The Board finds that the strict application of the Zoning Ordinance results in practical difficulties to the property owner.

- (b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

The Board finds that the proposed addition will protrude no further than the existing residence and that the requested variances are the minimum reasonably necessary.

- (c) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The addition will continue the residential use of the property and the variances will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

- (d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The record contains no correspondence or testimony in opposition to the variance request. The record contains letters of support, entered in the record as Exhibit Nos. 13(a) and (b). The proposed addition will be in harmony with the existing residence and will not materially change the view of the residence for the neighboring properties. The Board finds that variances will not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the requested variances of 3.50 feet from the required twenty (20) foot rear lot line setback for the existing single family-dwelling and of 3.50 feet from the required

twenty (20) foot rear lot line setback for the construction of a two-story addition are granted subject to the following conditions:

1. The petitioner shall be bound by all of her testimony and exhibits of record, and the testimony of her witnesses, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4(a) and (b) and 6(a) through 6(g).

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Allison Ishihara Fultz, seconded by Donna L. Barron, with Louise L. Mayer, Angelo M. Caputo and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the following Resolution:

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 10th day of October, 2002

Katherine Freeman
Executive Secretary to the Board

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

